

JULIE A. BARTHELS
Winnebago County Clerk
112 Otter Avenue, P.O. Box 2806
Oshkosh, WI 54903-2806

NOTICE OF COMMISSION, BOARD OR COMMITTEE MEETING

Name of Committee: Parks & Recreation Committee
Date & Time of Meeting: Tuesday, August 8th, 2023 at 10:00am
625 E Cty Rd Y
Oshkosh, WI 54901
Volunteer Room

Join Zoom Meeting

<https://us06web.zoom.us/j/89759828212?pwd=RGpSSUIraFh6dzVSWFFEYUgvaFBPdz09>

Meeting ID: 897 5982 8212

Passcode: 412765

SUBJECT MATTER OF THE MEETING

1. Call to order
2. Approval of Agenda
3. Approval of July 11th, 2023 Meeting Minutes
4. Public Comment
5. **Project Update** – Grundman Boat Landing Construction
6. **Project Update** – Comprehensive Outdoor Recreation Plan – MSA
7. **Project Update** – Automated Pay Stations – Spirit Fund Request
8. **Discussion/Action** – Sunnyview Exposition Sign Lease
9. **Discussion/Action** – Waukau Dam MOU
10. Next Meeting Date:
11. Future Agenda Items:
12. Adjournment

Upon request, provisions will be made for people with disabilities upon 24 hours prior notice to the Office of the County Clerk. Phone Number: 232-3430.

Parks & Recreation Committee Meeting Minutes

Date & Time of Meeting: Tuesday, July 11, 2023 at 10 a.m.

Location: J.P. Coughlin Center

Present: Steve Binder, Jim Ponzer, Karen Powers, Josh Belville (via Zoom), Rachael Dowling

Also Present: Adam Breest, Rick Helms, Kyle Vergin, Justin DeJager

1. Call to order:

Karen Powers called the meeting to order at 10 a.m.

2. Approval of Agenda:

Steve Binder moved to approve the agenda and Jim Ponzer seconded.
Motion carried 5-0.

3. Approval of May 26, 2023 Minutes:

Steve Binder moved to approve the minutes and Jim Ponzer seconded.
Motion carried 4-0. Rachael Dowling abstained.

4. Public Comment:

Sydney Opperman – Commented on trees and shrubs overgrowing in front of a memorial bench at Asylum Point Boat Landing. Would like the area cleaned up or the bench to be moved. Would like old dock removed.

5. **Introduction** – Kyle Vergin – Parks and Expo Grounds Manager

Kyle Vergin introduced himself to the committee. Been with the County for seven years, previous park foreman.

6. **Project Update** – Grundman Boat Landing Construction

Adam Breest gave an update on the construction project. Work started July 5, will last about three to four months, weather dependent. Everything is going well. Trees removed, dredging, bio-filters. A few small change orders, remaining on budget.

7. **Presentation** – Comprehensive Outdoor Recreation Plan – MSA

Alex Naudziunas gave an overview of the CORP project including scope, schedules and surveys. Most of phase 1 and 2 mostly complete. Into phase 3, survey and website are live. Public input meeting July 25 at 6 p.m. at the JP Coughlin Building. Work on the Community Park Master Plan will begin after the CORP, sometime in late-July/August. Survey and public input meeting #2, in September/October.

Parks Dept. will be promoting the survey throughout the county.

Design charrette for Community Park users/focus groups scheduled for August 29 during the day around 1 p.m. (still to be determined) at Winnebago County Community Park.

Reviewed the website and the survey.

Priorities from the Parks Committee – pickleball courts, splash pad, rebuild shelter, expo, re-open the beach w/ some floats.

Issues/Opportunities from the Parks Committee – making sure of ADA compliance, bathrooms at all park facilities, there's nothing that really brings people to the park.

8. **Discussion/Action** – Sunnyview Exposition Sign Lease

Discussed and reviewed the proposed sign lease with Wisconsin Sign Company LLC. Reviewed design and location of potential sign. Parks would get 10% of the ad time on the new LED sign. WSC would do ad sales (parks can deny ads if needed) and pay for electric, maintenance, lease of the land. Possible installation next spring.

Committee would like some items clarified – 10% ad time, sign design, alcohol/tobacco. Will review and bring back next month.

9. **Discussion/Action** – Waukau Dam MOU

The mountain bike trail is maintained by an organization of volunteers from NEWT.

The Parks Department would like to enter into a Memorandum of Understanding with the NorthEast Wisconsin Trails (NEWT) for the purpose of maintaining the Waukau Dam Mountain Bike Trails. NEWT uses equipment on park property for clearing trails making a formal memorandum necessary.

Discussed parking lot and possible bridge for access to the bike trail.

10. **Discussion** – Pickleball Courts in Community Park

Discussed the possible addition of more pickleball courts at the Community Park. Would be a good regional complex.

Committee discussed about how ARPA funds are being approved. Need to make sure funded projects are going through the Committee first.

11. **Committee Comments**

Steve Binder – Would like the memorial benches taken care of more. Put on concrete pads under benches. Would like more work done at the park.

Jim Ponzer – Boardwalk at Shangri La... would like it built up as an area for kids/schools.

Rachael Dowling – No comment.

Karen Powers – Appreciated the retirement party for Tom.

Josh Belville – No comment.

12. Next Meeting Date:

Tuesday, August 8, 2023 at 10 a.m.

13. Future Agenda Items:

No comment.

14. Adjournment

Steve Binder made the motion to adjourn and it was seconded by Jim Ponzer.

Motion carried 5-0. Meeting adjourned at 11: 55 a.m.

Respectfully Submitted,
Justin DeJager

Agenda Item Report



Winnebago County
The Wave of the Future

DATE: July 5, 2023
FROM: DIRECTOR OF PARKS AND EXPO CENTER
RE: Sunnyview Exposition Center Sign Replacement

General Description:

The Winnebago County Parks Department would like to enter into a Memorandum of Understanding with NorthEast Wisconsin Trails for the purpose of maintaining the Waukau Dam Mountain Bike Trails.

Requested Action:

The Parks Department recommends that the Parks and Recreation Committee recommends Executing an Agreement with Wisconsin Sign Company, LLC, for the Purpose of Installing a New Marquee Sign on Sunnyview Exposition Property following Removal of the Existing Marquee Sign by Winnebago County.

Procedural Steps:

Parks and Recreation Committee
Action taken:
County Board

Meeting date: 8/3/23
Vote:
Meeting date: 9/19/23

Background:

In 2022, the Winnebago County Parks Department was approached by a company that was interested in leasing land from Winnebago County for the purpose of erecting a sign on County property. The Winnebago County Parks Department recommended that we look at the possibility of replacing the current Sunnyview Exposition marquee sign along Jackson Street with a brand-new marquee sign that could also be utilized for outside advertising.

Wisconsin Sign Company LLC has proposed erecting a new sign on County Property. Wisconsin Sign Company LLC will pay monthly rent and utilities. This will be another revenue source for the Parks Department while also replacing our current sign that no longer functions properly and is beginning to rust. Winnebago County would be given advertising time on the sign as well.

I have included a few more provisions that are included in the agreement as well.

1. The Town of Oshkosh issues a conditional use permit for the sign.
2. Wisconsin Sign Company, LLC, pays for all utilities.
3. After removal of the existing sign, Winnebago County bears no responsibility for the installation or maintenance of the new multi-media sign.
4. Advertisements on the sign are appropriate for display on Winnebago County property, follow all Winnebago County rules and regulations, and are reviewable by the County Executive or designee.

5. No less than ten percent (10%) of the advertising time is available to Winnebago County free of charge.

Attachments:

- Resolution
- Marquee Sign Draft Design
- MOA Document

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RESOLUTION: Authority to Execute an Agreement with Wisconsin Sign Company, LLC, for the Purpose of Installing a New Marquee Sign on Sunnyview Exposition Property following Removal of the Existing Marquee Sign by Winnebago County

TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:

WHEREAS, along Jackson Street, the Sunnyview Exposition Center has a yellow sign with an electronic marquee, which was installed over three decades ago and is no longer operational, efficient, or effective; and

WHEREAS, Winnebago County has been approached by a community sign company, Wisconsin Sign Company, LLC, for the purpose of removing the existing sign and installing a new Sunnyview Exposition Sign and LED video board at minimal cost to the county; and

WHEREAS, should Winnebago County choose to own and operate a new sign, the estimated cost is between \$150,000 and \$250,000; and

WHEREAS, Wisconsin Sign is proposing to own the sign through an agreement while Winnebago County would receive payments to cover rent and utilities from Wisconsin Sign and up to 10% of the advertisement space on the new video board; and

WHEREAS, Wisconsin Sign will be required to pay for the installation of the new multi-media sign and sell advertising space on the new marquee sign.

NOW, THEREFORE, BE IT RESOLVED by the Winnebago County Board of Supervisors that it authorizes Winnebago County administration to negotiate and enter into a ten-year agreement with Wisconsin Sign Company, LLC, for the purpose of installing a new multi-media sign on the Sunnyview Exposition Center property after the removal of the existing marquee sign by Winnebago County provided the following provisions are included in the agreement:

- 1) the Town of Oshkosh issues a conditional use permit for the sign;
- 2) Wisconsin Sign Company, LLC, pays for all utilities;
- 3) After removal of the existing sign, Winnebago County bears no responsibility for the installation or maintenance of the new multi-media sign;
- 4) Advertisements on the sign are appropriate for display on Winnebago County property, follow all Winnebago County rules and regulations, and are reviewable by the County Executive or designee;
- 5) No less than ten percent (10%) of the advertising time is available to Winnebago County free of charge.

BE IT FURTHER RESOLVED that the agreement may be extended for an additional ten-year period with approval of the Parks and Recreation Committee.

36 *Fiscal Impact:* There will be some minor costs for removing the existing marquee sign. Staff estimate this amount to
37 be no more than \$5000 and will be covered by the Parks Department operational budget. It is estimated that rent will
38 be between \$4,000 and \$6,000 annually. Rent will be added to the park's revenue similar to any other event lease.

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Respectfully submitted by:

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PARKS AND RECREATION COMMITTEE

42 Committee Vote: _____

43 Vote Required for Passage: **Majority of Members Present**

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45 Approved by the Winnebago County Executive this _____ day of _____, 2023.

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Jonathan D. Doemel
Winnebago County Executive

DRAFT

COMMERICAL LAND LEASE

This lease is made and entered into this _____ day of _____, 2023, by and between Winnebago County (herein referred to as "Landlord"), and "Ad-ucation Media DBA as Robert W. Jewell" Sole Proprietor (hereinafter referred to an "Tenant").

1. LEASED PREMISES

Landlord does hereby lease to Tenant the described on Exhibit A to this lease, which is incorporated herein by reference ("Leased Premises").

2. TERM OF LEASE

Tenant shall be entitled to occupy the premises upon execution of this Lease, as of April 1, 2024, and may commence making approved improvements at that time. The Lease shall terminate at midnight March 31, 2033

3. RENT

Rent payments will start 60 days after sign location goes live. Tenant will have (12) months from date of contract signing to erect sign project. Tenant agrees to pay Landlord for it use and occupancy of the Leased Premises during the Lease Term a minimum base rental charge in the amount of:

- a. \$250 Per Month – Year 1 and 2
- b. \$400 Per Month – Year 3
- c. \$550 Per Month – Year 4-10

Rent shall be payable in monthly installments in advance, commencing on or before the effective date of this lease, and continuing on or before the first (1st) day of each succeeding month during the Lease Term.

4. OPTION TO EXTEND LEASE

Tenant shall have the option to extend this Lease for an additional ten (10) year term. Said option shall be exercised in writing by Tenant at least one hundred twenty (120) days prior to the termination of this Lease. If Tenant exercises this option, the rent shall increase as described in paragraph 3, above. Rent payment shall increase 10% every 5 years at the start of the extension and again at--the 5-year mark of said extension.

5. USE OF PREMISES

- A. Tenant shall use the Leased Premises to construct a multi-media sign which shall be used in accordance with the terms and conditions set forth in paragraph 8 below.

Tenant shall comply with all present and future laws or ordinances applicable to the Leased Premises and shall not commit or suffer waste on the Leased Premises, or use or permit

anything on the Leased Premises which may be illegal, or constitute a private or public nuisance, or conflict with or invalidate or increase the cost of Landlord's fire and extended coverage insurance, or which may be dangerous to persons or the property of the Landlord. Notwithstanding the foregoing, Tenant's effecting an increase in the cost of any of Landlord's fire and extended insurance is curable by Tenant's payment of such increase in cost.

6. UTILITIES

Tenant agrees to pay and be responsible for, when due, all electricity, data and other such services used on or charged against the Leased Premises during Tenant's use and occupancy thereof, commencing the effective date of this lease. Tenant shall be responsible for installing a new meter with utility provider.

7. IMPROVEMENTS AND MAINTENANCE

- A. During the Lease Term, Tenant shall at their sole cost and expense install, keep and maintain in good condition and repair all components necessary for the multi-media sign. Prior to construction, Tenant shall present plans for construction to Landlord for Landlord's approval.
- B. Landlord shall mow grass, trim property around sign location. Landlord shall remove all existing trees, brush, foliage that is currently obstructing the sign location. Landlord shall also remove current sign along with any materials associated with the sign and dispose of at their expense.
- C. Tenant is required to obtain all building permits required for Tenant's Work. This includes a conditional use permit with the Town of Oshkosh. Tenant shall have all work inspected by the building inspector.

8. NATURE AND APPROVAL OF ADVERTISING

- A. Except for the terms and conditions contained herein, Tenant shall be solely responsible for the sale of advertising time and shall determine all terms and conditions thereto.
- B. Landlord and Tenant agree that the sign being placed on the Leased Premises is intended to be a sign for the benefit of Winnebago County, including the citizens and businesses of the County. Based on the public purpose described herein, Tenant agrees to be bound by the following guidelines:
 - a. Tenant shall provide ten percent (10%) of the advertising time to the Landlord to be utilized by the Landlord for advertising events at the Sunnyview Expo Center or within the Parks System. The Landlord also has the

right to share the space with other non-profit's and community organizations as approved by the County.

- b. Tenant shall attempt to market advertising to advertisers based in Winnebago County before soliciting advertisements from other regional advertisers.
 - c. No individual or company shall utilize any more than 20% of the available advertising time. Additionally, Tenant shall provide equal access to advertising time, as much as is practicable, to all individuals and businesses in Winnebago County and shall not enter into any exclusive advertising contracts for a particular type or class of business.
- C. Tenant shall be responsible to ensure that all advertising is in good taste, is appropriate for school-aged children, and does not seek to promote, encourage or engage in any of the following:
- a. Promote any community event outside of Winnebago County without prior approval from the County;
 - b. Promote the sale or use of alcohol or tobacco products;
 - c. Promote any type of adult entertainment business;
 - d. Promote unlawful or illegal goods, services or activities;
 - e. Make false, misleading, deceptive or unwarranted statements or claims;
 - f. Infringe upon another persons' rights through plagiarism, unfair imitation of another person's idea, or any other unfair competition;
 - g. Disparage a competitor or a competitor's products or services;
 - h. Advertise lotteries or other games of chance, except for raffles performed by community organizations;
 - i. Contain slanderous, obscene, sexual, profane, vulgar, repulsive, or offensive matters either in theme or in treatment;
 - j. Appeal for funds, except for fundraising by community not for profit organizations;
 - k. Contain testimonials that cannot be authenticated; or
 - l. Declare or imply an endorsement by the County of any service, product, or point of view;
 - m. Political advertisements either local, state, or federal
- D. County shall appoint a representative who shall have the authority to review all advertising based upon the above described criteria and shall the authority to prevent such advertising based upon these criteria. County shall review and approve or disapprove the advertising within two (3) business days of receipt.

9. LIENS

- A. Nothing in this Lease shall authorize Tenant to do any act which shall in any way encumber the title of Landlord in and to the Leased Premises, nor shall the interest or estate of Tenant in the Leased Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant, and any claim to or lien upon the Leased Premises arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall in all respects be subject and subordinate to the paramount title of Landlord. Tenant shall not permit the Leased Premises to become subject to any mechanic's, laborer's or materialmen's lien; provided, however, that Tenant shall have the right to contest in good faith and with reasonable diligence the validity of any such claimed lien. On final determination of the claim for lien, Tenant will immediately pay any judgment rendered with all proper costs and charges and will at its own expense have the lien released and any judgment satisfied.
- B. In case Tenant shall fail to contest the validity of any claimed lien, or having commenced to contest the same shall fail to prosecute such contest with diligence, or shall fail to have the same released and any judgment rendered thereon satisfied, Landlord may at their election discharge such claim for lien (with the right in their discretion to settle or compromise the same) and any amounts advanced by Landlord for such purposes including all costs associated therewith and attorney fees, shall be payable in full by Tenant within seven (7) days of written demand by Landlord.

10. INSURANCE

- A. Liability Insurance. During the term of this Lease and any renewals or extensions thereof, Tenant shall keep, maintain and pay for liability insurance naming Landlord as an additional insured and with coverage in an amount of not less than One Million Dollars (\$1,000,000). Any such policies shall contain a provision requiring written notice to Landlord by the issuing company not less than ten (10) days prior to expiration, cancellation, non-renewal or modification of the policies or any coverage provided thereby. Tenant shall furnish Landlord a certificate of insurance from a reputable insurance company showing the above coverage.
- B. Property Insurance. Landlord shall obtain and keep in force during the term of this Lease a policy of all risk insurance, which includes fire and extended coverage, covering loss or damage to the Leased Premises (exclusive of Tenant's leasehold improvements). Landlord shall be the named insured and such policy shall be for the benefit of Landlord. All proceeds of such insurance shall be payable to Landlord and/or their mortgagee, as their interests may appear.

- C. Insurance of Tenant's Property. Tenant shall secure such comprehensive fire insurance with extended coverage as Tenant deems necessary to protect Tenant as to loss of fixtures, leasehold improvements, inventory, other contents and loss of earnings should fire or other casualty loss occur. Landlord and Tenant hereby agree to look to such insurance coverage for recovery of any such covered loss and waive as against the other, to the extent such waiver does not invalidate any insurance coverage, any and all claims or demands of whatsoever nature for damage, loss or injury to the Leased Premises which shall be caused by fire or result from fire and/or other perils, events or happenings insured.

11. INDEMNITY

- A. Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Leased Premises, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Leased Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims, losses, damages, costs, fees, penalties, charges, assessments, taxes, fines or other claims or expenses, including reasonable attorney fees, arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of the Tenant, or any of Tenant's agents, contractors, invitees or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel satisfactory to Landlord. The provisions of this subparagraph will survive the expiration or termination of this Lease.
- B. Tenant shall keep and maintain the Leased Premises in compliance with, and shall not cause or permit the Leased Premises to be in violation of, any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to environmental conditions ("Hazardous Materials Laws") on, under, about, or affecting the Leased Premises. Tenant shall not use, generate, manufacture, store or dispose of on, under, or about the Leased Premises or transport to or from the Leased Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances,"

under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials").

- C. Tenant shall be solely responsible for, and shall indemnify and hold harmless Landlord, their members, employees, agents, successors, and assigns from and against any losses, damages, costs, fees, penalties, charges, assessments, taxes, fines or other liabilities or expenses, including reasonable attorney fees, directly or indirectly arising out of or attributable to Tenant's use, generation, storage, release, discharge, or disposal of Hazardous Materials on, under, or about the Leased Premises including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Leased Premises, and (iii) the preparation or implementation of any closure, remedial or other required plans.
- D. Notwithstanding anything in this Lease to the contrary, Tenant shall have no liability to Landlord arising directly or indirectly from the presence of any Hazardous Materials on, under or about the Leased Premises which migrated onto the Leased Premises from adjacent properties, or resulted from the acts of others who have no business relationship with Tenant.

12. SURRENDER OF LEASED PREMISES

Upon the expiration of or sooner termination of the Lease Term, Tenant shall surrender the Leased Premises to Landlord in as good condition as when Tenant took possession. The sign structure and all things associated with the sign are the property of Ad-ucation Media DBA Robert W. Jewell and will be removed at tenant's expense.

13. COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant shall have the peaceful possession, quiet enjoyment and exclusive use of the Leased Premises for its business purposes during the term of this Lease without hindrance by Landlord or any party claiming by, through, or under Landlord. If any of Tenant's possessory, access, or use rights specified above shall become restricted so as to prevent Tenant from conducting its business operations, Tenant shall give prompt notice thereof to Landlord in writing, requesting that such restriction(s) be removed and Landlord shall use diligent efforts to attempt to remove such restriction(s). If such restriction(s) shall not have been removed within thirty (30) days after Landlord's receipt of such notice, Tenant shall have the right, in addition to any other rights and remedies under this Lease or at law or at equity, to either terminate this Lease without any further duty or obligation to Landlord and receive a refund of any prepaid rentals, or to remove said restriction(s) at Landlord's expense and deduct the cost from future rental payment due hereunder.

14. RE-ENTRY UPON DEFAULT

- A. If Tenant shall default in the payment of the rent or any part thereof, and such default shall continue for ten (10) days after notice thereof in writing to Tenant, or if default shall be made by Tenant in the performance of any of the other terms hereof, and such default shall continue for thirty (30) days after notice thereof in writing to the Tenant, or if (a) proceedings in bankruptcy be instituted by or against Tenant, or (b) a receiver or trustee is appointed for all or substantially all of Tenant's business or assets on the ground of Tenant's insolvency, or (c) a trustee is appointed for Tenant after a petition has been filed for Tenant's reorganization under the Bankruptcy Act of the United States, or (d) Tenant shall make an assignment for the benefit of its creditors, or (e) Tenant shall vacate or abandon the Leased Premises, then and in any such event it shall be lawful for Landlord, at their election, to declare the Lease Term ended and re enter the Leased Premises with or without process of law. If default shall be made, other than the payment of rent, which cannot with due diligence be cured within a period of thirty (30) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of thirty (30) days from and after the giving of such notice commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps required to cure such default and does so cure such default, Landlord shall not have the right to declare the Lease Term ended by reason of such default.
- B. The foregoing provisions for the termination of this Lease shall not operate to exclude or suspend any other remedy of Landlord for breach of any of said covenants or for the recovery of said rent or any advance of Landlord made thereon, and in the event of the termination of this Lease as aforesaid, Tenant agrees to indemnify and save harmless Landlord from any loss arising from such termination.

15. NOTICES

Any notices, requests, demands and other communications hereunder shall be in writing and shall be sent by registered or certified mail, postage prepaid, as follows:

If to Landlord:

Winnebago County
Attn: Parks Director
625 E County Road Y, Suite 500
Oshkosh, WI 54901

If to Tenant:

Ad-ucation Media, LLC

Attn: Robert Jewell
70 N. Johnson St., Suite #2
Hartford, WI 53027

Notices sent by U.S. Mail shall be effective on the date received as shown by the post office receipt. Any party may change a party or an address for receiving notice by written notice given to the other named above.

16. ASSIGNMENT AND SUBLETTING

- A. Tenant covenants and agrees that neither this Lease nor the term and estate hereby granted, nor any part hereof or thereof, will be assigned, mortgaged, pledged, encumbered or otherwise transferred, by operation of law or otherwise, and that neither the Leased Premises, nor any part thereof, will be sublet, licensed or occupied by anyone other than Tenant, or for any purpose other than as hereinbefore set forth, without the prior written consent of Landlord in every case. Any direct or indirect transfer of the capital stock of Tenant shall not be deemed an assignment hereunder and shall not require the consent of Landlord.
- B. If Tenant wishes to obtain Landlord's written consent to assign this Lease to, sublet all or any part of the Leased Premises to, or permit the Leased Premises to be occupied by any party other than Tenant, Tenant shall first notify Landlord of such proposed transaction in writing, specifying the name of the proposed assignee, subtenant or occupant, the name of and character of its business, the terms of the proposed assignment, sublease or occupancy (including, without limitation, the commencement and expiration dates thereof) and current information as to the financial responsibility and standing of the proposed assignee, sublessee or occupant, and shall provide Landlord with such other information as Landlord reasonably requests. Landlord agrees that they will evaluate in good faith the information so provided to them and will not unreasonably withhold or delay the issuance of their written consent to any such proposed transaction.
- C. Each permitted assignee or transferee (excluding sublessees and licensees) shall in writing prior to the effective date thereof deliver to Landlord an instrument whereby it shall assume the payment of the base rent and other amounts due and owing by Tenant hereunder, and the due performance of and compliance with all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed or complied with for the Lease Term.
- D. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest hereunder, Tenant shall in no way be released from any of its obligations under this Lease, unless specifically agreed otherwise by Landlord in writing.

17. MEMORANDUM OF LEASES

Tenant agrees that it will not record this Lease. If Tenant or Landlord requests, the parties will enter into a short form lease, describing the Leased Premises and the term of this Lease, and including any other terms necessary to permit the recording of such short form lease. Such recording, if requested by Tenant, shall be at its cost and expense.

18. LATE CHARGES; INTEREST

Any monthly rental installment payment due hereunder which is not received by Landlord on or before the fifth (5th) day after its due date shall be subject to a penalty of five percent (5%) of the amount of such delinquency, which shall be due and payable to Landlord immediately upon its demand therefor. Any other amount due from Tenant to Landlord under this Lease which is not paid when due shall bear interest at the rate of two points above the publicly announced prime rate of interest charged from time to time by a bank utilized by Winnebago County from the date due until paid; provided, however, the payment of such interest shall not excuse or cure the default upon which such interest is accrued.

19. NON-WAIVER

Landlord's or Tenant's failure to insist upon strict performance of any covenant of this Lease or to exercise any option or right herein contained shall not be a waiver or relinquishment for the future of such covenant, right or option, but the same shall remain in full force and effect.

20. FORCE MAJEURE

The time within which any of the parties hereto shall be required to perform any act or acts under this Lease shall be extended to the extent that the performance of such act or acts shall not be delayed by acts of God, fire, windstorm, flood, explosion, collapse of structures, riot, war, labor disputes, delays or restrictions by governmental bodies, inability to obtain or use necessary materials, or any cause beyond the reasonable control of such party, other than lack of funds or inability to procure funds to fulfill its commitment or obligation under this Lease; provided, however, that the party entitled to such extension hereunder shall give prompt notice to the other party of the occurrence causing such delay. The provisions of this Section 26 shall not operate to excuse Tenant from prompt payment of rent, additional rent, or any other payments required by the terms of this Lease.

21. AMENDMENTS IN WRITING

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises, and there are no covenants, promises, agreements, conditions or understandings, oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless

reduced to writing and signed by both parties.

22. AUTHORITY

Landlord and Tenant respectively represent and warrant to each other that this Lease has been duly authorized, executed and delivered by each of them, is valid and enforceable in accordance with its terms, and that compliance by each of them with the terms and conditions hereof will not conflict with, result in a breach of or be adversely affected by their partnership agreement, articles of incorporation, bylaws or any other agreement or instrument to which each is a party or by which each may be bound, or any judgment, order, law, statute or regulation to which each is subject.

23. COPIES

This Lease shall be executed in multiple copies, any one of which may be considered and used as an original.

24. CAPTIONS

Section and paragraph captions are not a part of this Lease, but are for purposes of clarity and information only.

25. APPLICABLE LAW AND VENUE

This Lease shall be construed and enforced in accordance with the laws of the State of Wisconsin. Venue shall be in Winnebago County.

26. PARTIES IN INTEREST

The covenants, conditions and agreements contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns; provided, however, that any assignee of Tenant shall benefit only to the extent that its interest was acquired in compliance with the provisions hereof.

27. LANDLORD'S PERFORMANCE OF TENANT'S COVENANTS

Should Tenant at any time fail to do any of the things required to be done by it under the terms of this Lease, Landlord, at their option, and in addition to any and all other rights and remedies, may (but shall not be required to) cause the same to be done, and Landlord's cost in connection therewith shall constitute additional rental due from Tenant and shall be a demand obligation owing by Tenant to Landlord.

28. SECURITY DEPOSIT

Tenant has deposited with Landlord the sum of One Thousand Dollars (\$1,000) to Landlord

on, or before the first day the sign goes live as security for Tenant's payment of the rent and other charges provided for herein and for the observance and performance by Tenant of all of the terms, provisions and conditions of this Lease on its part to be kept and performed, and further to indemnify the Landlord for any loss, costs, fees and expenses which Landlord may incur by reason of any default by Tenant. Such security deposit shall be refunded to Tenant upon the expiration or sooner termination of this Lease and after Tenant has vacated the Leased Premises and left the same in a condition required hereunder. Should Tenant default in the performance of any of its obligations under this Lease, Landlord may, at their sole option and in addition to any other rights or remedies they may have under the terms of this Lease or applicable law, use or apply such security deposit or any part thereof for the purpose of remedying such default. In the event that Landlord applied the security deposit or any portion thereof in payment of any obligation of Tenant hereunder, Tenant agrees, immediately upon written notice from Landlord, to pay to Landlord such funds as are necessary to restore the full amount of the security deposit specified above. Landlord shall be permitted to co-mingle such security deposit with any other funds of Landlord and shall not be required to pay or credit to Tenant any interest thereon.

29. DISCRIMINATION

During the term of this agreement the LESSEE agrees not to discriminate against any person, whether a recipient of services (actual or potential), an employee, a guest, or an applicant for employment on the basis of race, religion, sex, handicap, national origin, age, cultural differences, sexual preference or marital status.

30. ARBATRATION

- A. This Agreement shall be covered by the laws of the State of Wisconsin.
- B. Claims, disputes, and other matters in question between the parties to this Agreement arising out of, or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the American Arbitration Association rules then pertaining, upon the express written consent of all parties to this Agreement. In the event the parties proceed to arbitration, the following shall govern any such proceedings:
 - a. The American Arbitration Association shall submit a panel of five arbitrators to the parties. The parties shall alternate strikes until one arbitrator remains who shall arbitrate the dispute. The party initiating the first strike shall be determined by the winner of a coin flip.
 - b. The costs of the arbitration proceeding (except for the filing fee, which shall be paid by the party initiating the proceeding) shall be borne equally by the parties. Each party shall pay his own legal fees and expenses incurred in connection with the proceeding.

- c. Any arbitration shall take place in the City of Oshkosh, Winnebago County, Wisconsin.
- d. Unless otherwise agreed by the parties, the arbitration hearing in this matter shall be limited to one day in length with the arbitrator providing each side equal time to present its case during that day.
- e. Any discovery proceeding shall be limited to the thirty (30) day period prior to the date of the arbitration hearing. The party requesting the discovery shall pay for all costs incurred by the opposite party, except for attorney's fees, related to the discovery procedure, including, but not limited to witness and reporter's fees related to depositions, photocopying fees, postage fees, and delivery fees.
- f. The arbitrator, in issuing any ruling with regard to any arbitration matter, shall issue a written decision which shall include written findings of fact and conclusions of law.
- g. The proceeding and arbitration shall be governed by the laws of the State of Wisconsin, including specifically, Chapter 788 of the Wisconsin Statutes.

31. COMPLIANCE WITH WISCONSIN PUBLIC RECORDS LAW

Lessee understands that Winnebago County is bound by the Wisconsin Public Records Law, Wis. Stat. sec. 19.21, et. seq. Pursuant to Wis. Stat. sec. 19.36 (3), the County may be obligated to produce to a third party the records of a Lessee that are "produced or collected" by the Lessee under this Agreement ("Records"). Lessee is further directed to Wis. Stat. sec. 19.21, et. seq. for the statutory definition of Records subject to disclosure under this paragraph, and Lessee acknowledges that it has read and understands that definition. Notwithstanding any other term of this Agreement, Lessee is (1) obligated to retain Records for seven (7) years from the date of the Record's creation; and (2) produce such Records to County if, in County's determination, County is required to produce the records to a third party in response to a public records request. Lessee's failure to retain and produce Records as required by this paragraph shall constitute a material breach of this Agreement, and Lessee must defend and hold the County harmless from liability due such breach.

32. ENTIRE AGREEMENT

The entire Agreement of the parties is contained herein, and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed by their undersigned duly authorized representatives on the date first above set forth.

LANDLORD:
Winnebago County

TENANT:
Ad-ucation Media, LLC

By: _____
Jon Doemel
Winnebago County Executive

By: _____
Robert Jewel
Owner

By: _____
Julie Barthels
Winnebago County Clerk

DRAFT

Exhibit A



Agenda Item Report



Winnebago County
The Wave of the Future

DATE: July 5, 2023
FROM: DIRECTOR OF PARKS AND EXPO CENTER
RE: MOU Waukau Dam Trail

General Description:

The Winnebago County Parks Department would like to enter into a Memorandum of Understanding with NorthEast Wisconsin Trails for the purpose of maintaining the Waukau Dam Mountain Bike Trails.

Requested Action:

The Parks Department recommends that the Parks and Recreation Committee recommends to the County Board to authorize the County Executive and County Clerk to approve a Memorandum of Understanding between Winnebago County and NorthEast Wisconsin Trails for the purpose of maintaining the mountain bike trails at the Waukau Dam

Procedural Steps:

Parks and Recreation Committee	Meeting date: 8/9/23
Action taken:	Vote:
County Board	Meeting date: 9/19/23

Background:

The Waukau Dam Mountain Bike Trail is a roughly two and a half mile, single track mountain bike trail that meanders along the steep hillsides and through the deep ravines of the Waukau Dam Nature Preserve.

In 2016, the Winnebago County Parks Department began discussions to construct a single-track mountain bike trail at the Waukau Dam. A few local mountain bike enthusiasts volunteered nearly 1,800 hours to build and maintain the trail. The build began in late 2016 and the current layout was completed in September of 2018. The trail is considered an intermediate level mountain bike trail. The rugged landscape makes for challenging climbs, fast descents and amazing views of Waukau Creek and surrounding forest.

Advanced features have been added along the trail for those who wish to hone their skills – numerous bridges, jumps, drops, and skill features help to keep the ride exciting and challenging. Bypasses are available for all the advanced features.

The trail is open for riding year-round (fat tire bikes are required for winter riding), weather permitting. The trail is closed to riding anytime it is wet or muddy. Trail conditions are closely monitored by NEWT.

North East Wisconsin Trails and the Winnebago County Parks Department would like to enter into a Memorandum of Understanding for the continued maintenance and operation of this single track bike trail. We feel that the operation should be more formal in nature as they utilize equipment on park property for clearing the trails.

Attachments:

- Resolution
- MOA Document

1
2
3 **RESOLUTION: Authorizing the Winnebago County Parks Department to enter**
4 **into a Memorandum of Understanding with NorthEast Wisconsin Trails for the**
5 **purpose of maintaining and operating the Waukau Dam Mountain Bike Trails**
6 **System.**

7
8 **TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:**

9 **WHEREAS**, the Winnebago County Parks Department is responsible for maintaining and programming the
10 Waukau Dam Nature Area; and

11 **WHEREAS**, NorthEast Wisconsin Trails is a non-profit organization in the Fox Valley Area that voluntarily
12 helps maintain and operate eight mountain bike trails in the Fox Valley region; and

13 **WHEREAS**, the Winnebago County Parks Department wishes to enter into a formal Memorandum of
14 Understanding with NorthEast Wisconsin Trails to continue to maintain and operate the single track mountain bike
15 trail located at the Waukau Dam Nature Area located within the Town of Rushford.

16 **NOW, THEREFORE, BE IT RESOLVED** by the Winnebago County Board of Supervisors that it authorizes the
17 Winnebago County Executive and Winnebago County Clerk to enter into an agreement with NorthEast Wisconsin Trails
18 for the purpose of maintaining and operating the Waukau Dam Mountain Bike Trail system at the Waukau Dam Nature
19 Area.

20
21 *Fiscal Note: There is no budget impact to the Parks Department. However, partnering with a non-profit such*
22 *as North East Wisconsin Trails will save the Winnebago County Parks Department time and money while providing a*
23 *recreational amenity to the Winnebago County residents.*

24
25
26 Respectfully submitted by:

27 **PARKS & RECREATION COMMITTEE**

28 Committee Vote:

29
30 Vote Required for Passage: **Majority of Members Present**

31
32 Approved by the Winnebago County Executive this ____ day of _____, 2023.

33
34 _____
35 Jonathan D. Doemel
36 Winnebago County Executive

MEMORANDUM OF UNDERSTANDING
Between the
Winnebago County Parks Department
and
NorthEast Wisconsin Trails

I. PURPOSE.

This Memorandum of Understanding (MOU) is to establish a general framework of cooperation between the Winnebago County Parks Department (the County) and NorthEast Wisconsin Trails (NEWT) for the purpose of maintaining and monitoring the multi-purpose trails on lands at Waukau Dam County Park located at the intersection of CTY HWY K and ST HWY 116 in the Town of Rushford.

II. BACKGROUND.

The Waukau Dam Mountain Bike Trail is a roughly two and a half mile, single track mountain bike trail that meanders along the steep hillsides and through the deep ravines of the Waukau Dam Nature Preserve.

In 2016, the Winnebago County Parks Department began discussions to construct a single-track mountain bike trail at the Waukau Dam. A few local mountain bike enthusiasts volunteered nearly 1,800 hours to build and maintain the trail. The build began in late 2016 and the current layout was completed in September of 2018. The trail is considered an intermediate level mountain bike trail. The rugged landscape makes for challenging climbs, fast descents and amazing views of Waukau Creek and surrounding forest.

Advanced features have been added along the trail for those who wish to hone their skills – numerous bridges, jumps, drops, and skill features help to keep the ride exciting and challenging. Bypasses are available for all the advanced features.

The trail is open for riding year-round (fat tire bikes are required for winter riding), weather permitting. The trail is closed to riding anytime it is wet or muddy. Trail conditions are closely monitored by NEWT.

III. RESPONSIBILITIES. Subject to applicable Federal laws, regulations, and policy:

A. The County shall:

1. Provide NEWT access to lands owned/managed by the County for stewardship purposes.
2. The County shall work with NEWT to develop a sustainable mountain bike trail system with the Waukau Dam Nature Preserve.

3. The County will assist in advertising the mountain bike trail system within the park.

B. NEWT shall:

1. Coordinate efforts with the County for the continued maintenance of a multi-purpose trail located within the Waukau Dam Nature Preserve located on the map in Exhibit A.
2. NEWT will assist with the creation and execute the regular maintenance of a proposed sustainable trail plan that will be approved by the County Parks Department. The trail will utilize the International Mountain Bicycling Association (IMBA) Standards for trail construction and maintenance.
3. NEWT is allowed to utilized handheld equipment such as chainsaws, pole saws, pruners, and shovels on Winnebago County property for the purpose of maintaining the mountain bike trail system. If other heavy equipment is required, NEWT must receive written permission from the Winnebago County Parks Director.
4. NEWT will provide a certificate of insurance as defined in Exhibit B of this MOU.

IV. MUTUAL UNDERSTANDINGS.

- A. This MOU defines the general terms upon which the County and NEWT will cooperate. Performance by either Party under the terms of this MOU is subject to the availability of appropriated funds and personnel resources through their respective funding procedures. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds or transfer of anything of value, between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be outlined in separate agreements, such as work plans or statements of work, which shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority.
- B. This MOU may be modified or amended by mutual agreement of both parties in writing.
- C. This MOU may be terminated at any time by mutual written agreement of the Parties, or by either Party upon 60 days written notice to the other Party.

D. This MOU will remain in force for a period of five years from the date of its execution.

V. INDEMNIFICATION.

The COUNTY shall not be responsible for any damage, or injury incurred by NEWT or NEWTS' agents, servants, employees, volunteers, or property, from any cause, prior, during or subsequent to the term of this agreement. Likewise, the COUNTY shall not be responsible for any damage, loss, or liability of any kind and nature, occurring on the PREMISES, the property adjacent thereto and any other portion of the Waukau Dam Nature Preserve, by reason of any bodily injury to or death of any person, or by reason of any damage to property of third persons occasioned by any act or omission, neglect or wrongdoing of NEWT, or any of its officers, agents, representatives, assigns, guests, employees, volunteers, invitees, or persons admitted by NEWT to said PREMISES, arising out of the activities conducted by NEWT, its agents, members or guests (including claims of employees of NEWT or of any contractor or subcontractor). NEWT shall indemnify, save, keep harmless and defend the COUNTY, its directors, officers, agents, and employees against any and all loss, damages, injuries, liability claims, and costs or expenses of whatsoever kind and nature, including attorney's fees, which the COUNTY may sustain, incur or be required to pay, resulting from injury to or death of any person or persons, and for loss or damage to any property (technical or otherwise) occurring in connection with, in any way incident to, or otherwise arising out any services, operations, or performance of work in connection with this Agreement, resulting in whole or part from the negligent or intentional acts or omissions of NEWT, and the employees, agents, or representatives of NEWT regardless of whether such injury, death, loss or damage arises in part by the party to be indemnified hereunder. NEWT shall not be responsible for any injury or damages resulting solely from the negligence of the COUNTY.

A.

VI. POINTS OF CONTACT. The following individuals will be the points of contact for this MOU:

Winnebago County Parks Department	NorthEast Wisconsin Trails
Adam Breest	Derek Murphy
Director of Parks and Expo	President
625 E. County Rd. Y, Suite 500, Oshkosh, WI 54901	P.O. Box 140, Little Chute, WI, 54140
920-232-1961	920-205-5241
abreest@winnebagoountywi.gov	dmurphybsme@gmail.com

VII. EFFECTIVE DATE. The parties have executed this MOU as of the last date indicated below

Winnebago County
Jon Doemel
County Executive
Winnebago County Executive Office

NorthEast Wisconsin Trails
Derek Murphy
President
NorthEast Wisconsin Trails (NEWT)

Date: _____

Date: _____

Julie Barthels
County Clerk
Winnebago County Clerks Office

Date: _____

EXHIBIT "B" - INSURANCE

Prior to doing any work on the Waukau Dam trails and while the trail is open thereafter, NEWT, at its own cost and expense, shall furnish Winnebago County with a Certificate of Insurance indicating proof of the following insurance from companies licensed in the State:

1. General Liability Insurance with a minimum combined single limit of liability per occurrence for bodily injury and property damage of \$1,000,000 and \$1,000,000 aggregate. This insurance shall include on the Certificate of Insurance the following coverages:
 - a. Premises - Operations
 - b. Products and Completed Operations
 - c. Broad Form Property Damage
 - d. Broad Form Blanket Contractual
 - e. Personal Injury
 - f. Alcohol Liability (if alcohol on PREMISES)
2. The certificate shall list the **Certificate Holder and Address as follows:** Winnebago County, Attn.: Insurance Administrator, Winnebago County Courthouse, P.O. Box 2808, Oshkosh, WI 54903-2808. The Winnebago County Department(s) involved shall be listed under "Description of Operations".
3. Such insurance shall include under the **General Liability and Automobile Liability Policies**, Winnebago County, its employees, elected officials, representatives, and members of its boards and/or commissions as **"Additional Insureds"**.
4. Auto Liability @ \$1,000,000 per accident
5. **Such insurance shall include a thirty (30) day notice prior to cancellation or material policy change, which notice shall be given to the Winnebago County Insurance Administrator, c/o Winnebago County Courthouse, P.O. Box 2808, Oshkosh, Wisconsin 54903-2808. All such notices will name NEWT.**